



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

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NOV 5 2004

www.johnkerry-edwards.org
c/o www.joker.com
Siegfried Langenbach

Duesseldorf, Germany 40213

RE: MUR 5495
(www.johnkerry-edwards.org)

Dear Mr. Langenbach:

On August 4, 2004, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and public information, the Commission, on October 27, 2004, found that there is reason to believe that you violated 2 U.S.C. § 441h(b) of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with your responses to the enclosed subpoena and written questions within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

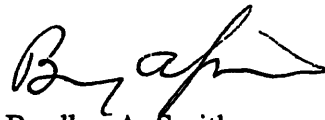
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Smith', with a stylized flourish at the end.

Bradley A. Smith
Chairman

Enclosures

Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: www.johnkerry-edwards.org
and/or Persons Unknown

MUR: 5495

I. INTRODUCTION

This matter was generated by complaint filed with the Federal Election Commission filed by John Kerry for President, Inc. (the "Kerry Committee"), the principal campaign committee of Senator John F. Kerry, the Democratic Party nominee for President of the United States. Complainant alleges that the website www.johnkerry-edwards.org and its owners/operators ("Respondents") violated the Federal Election Campaign Act of 1971, as amended ("the Act") by fraudulently soliciting and collecting contributions through an email solicitation and a website that Respondents claimed was authorized to solicit and collect contributions on behalf of the Kerry Committee. The evidence demonstrates that Respondents were not acting under the direction or with the permission of the candidate's authorized committee and that funds collected, if any, did not benefit the Kerry campaign.¹ Accordingly, there is reason to believe that Respondents violated § 441h(b) of the Act.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

On July 29, 2004 the Kerry Committee filed a complaint alleging that unknown persons were fraudulently soliciting and collecting contributions by electronic mail and

¹ Respondents have gone to great lengths to hide their identities and we have been unable to verify that the persons named by complainant are the only persons responsible for the fraudulent solicitations. For this reason, we have included "Persons Unknown" as a Respondent to include any persons who are not yet known to the Commission who might have participated in this scheme to violate the Act.

that the links in that solicitation directed recipients to a fraudulent website. Both the email and the website claimed that the solicitation was authorized by the Kerry Committee and that funds collected would benefit Senator Kerry. The email solicitation used by Respondents was almost identical to a legitimate bulk email solicitation that had been distributed by the Kerry Committee on July 20, 2004, two days before the Kerry Committee became aware of the fraudulent email solicitation.²

There were only two, almost indecipherable, differences between the legitimate and the fraudulent emails. First, the fraudulent email appeared to be sent from a false address, info@johnkerry.com, and correspondents who used the reply function in the email message were directed to another fake address, johnkerry@johnkerry.com.³ The use of both of these fraudulent addresses in the email would have probably been unremarkable or at least confusing to a recipient of the fraudulent solicitation, as the legitimate email address for the Kerry Committee's website is www.johnkerry.com. Second, all of the links embedded in the fraudulent email solicitation were modified so a recipient who clicked on any of the links, including the contribution link, would be redirected to the unauthorized website located at www.johnkerry-edwards.org.

Both the fraudulent email solicitation and website purported to be authorized by and for the benefit of the Kerry Committee. In fact, the fraudulent email solicitation purports to be authored by Mary Beth Cahill, Campaign Manager. The email also contains the several misleading statements designed to confuse recipients, including "Paid for by John Kerry for President, Inc.," and the disclaimer "Contributions or gifts to

² By July 22, 2004, when the Kerry Committee became aware of the fraudulent website, the site had been taken down and was no longer accessible.

³ Complainant asserted that the Kerry Committee has received over 30,000 undeliverable emails to the johnkerry@johnkerry.com address.

John Kerry for President, Inc. are not deductible for federal income tax purposes.” One of the links embedded in the email solicitation falsely purports to permit recipients to contact the campaign by stating, “To contact John Kerry for President, please click here,” but the link actually directs recipients to the fake website. Another link that directs recipients to the false website contains the message, “Keep the ball rolling: Contribute!”

The web host for www.johnkerry-edwards.org identified the registered owner of the website as Connie Bye of New Braunfels, TX. The Commission sent Ms. Bye a Notice of the complaint on August 4, 2004. On August 12, 2004, Ms. Bye contacted the Commission by telephone and letter stating that she had received the complaint and categorically denying the allegations contained therein. A thorough review of the evidence indicates that Ms. Bye is not the website’s owner; but is actually the victim of identity theft and someone used her personal information to establish and maintain the fraudulent website.

B. Analysis

1. Section 441h Violations

The Act prohibits the fraudulent solicitation of contributions. *See* 2 U.S.C. § 441h. Specifically, § 441h(b)(1) provides that no person shall fraudulently misrepresent that they are “speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations.” 2 U.S.C. §441h(b)(1). The Act also prohibits the “willful and knowing” participation or conspiracy to participate in any scheme designed to violate the prohibition of fraudulent misrepresentation in the solicitation of contributions or donations. 2 U.S.C. § 441h(b)(2).

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Respondents fraudulently misrepresented in their website and email solicitation that they were acting on behalf of and were the authorized agent of the Committee. The website claimed to be “Paid for by John Kerry for President, Inc.” and the email solicitation received by potential donors came from the fake email address info@johnkerry.com, which would appear to the unknowing recipient to be affiliated with the candidate’s authorized website www.johnkerry.com. Additionally, Respondents crafted the solicitation to closely mirror email communications sent by the Kerry Committee, in a deliberate effort to mislead and confuse contributors. In fact, Respondents copied the entire legitimate email solicitation sent out by the Kerry Committee on July 20th, only changing the links to redirect recipients to their fraudulent website. Through these links Respondents requested contributions, which they falsely claimed would benefit the Kerry campaign, under the heading “Keep the ball rolling: Contribute!”

Complainants contend that neither the website nor the email solicitations were authorized and none of the funds, if any, collected through the website benefited the Kerry Committee.⁴ Thus, there is reason to believe that Respondents misrepresented themselves and fraudulently solicited and collected contributions from potential donors. Accordingly, there is reason to believe that www.johnkerry-edwards.org and/or Persons Unknown violated 2 U.S.C. § 441h(b) by fraudulently soliciting and collecting contributions.

⁴ Respondents have gone to great lengths to hide their identities, including using personal information stolen from Connie Bye to conceal the identity and location of the participants in this fraud scheme. For this reason, we have included “Persons Unknown” as a Respondent in this matter.